

AN Q. NGO, P.E.  
Of Counsel  
U.S. Patent Attorney

# McFATRIDGE, BAKER & DEEN, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
3900 ESSEX LANE, SUITE 730  
HOUSTON, TEXAS 77027  
(713) 629-7966  
FACSIMILE (713) 629-7960

GALVESTON OFFICE:  
2228 SHIP'S MECHANIC ROW, SUITE 220  
GALVESTON, TEXAS 77550  
(409) 766-7966  
FACSIMILE: (409) 766-7955

#14 D A C  
Extension: 160  
E-Mail: lngo@mbdlegal.com  
www.mbdlegal.com

August 22, 2003

BY CERTIFIED MAIL

7001 2510 0001 4492 3993

RETURN RECEIPT REQUESTED

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Re: Patent No. 5,891,260  
Application No. 795,038

Dear Commissioner:

This letter is in response to your letter of August 13, 2003, a copy of which is enclosed, which affirmed that our petition to accept an unavoidably delayed payment of a maintenance fee file under 37 CFR 1.378(a) has met items 1 and 2 pursuant to 37 CFR 1.378(b), which include the required maintenance fee set forth in Sec. 1.20(e) through (g) and the surcharge set forth in Sec. 1.20(l)(1) accordingly. However, item (3) of the same section is not met, which requires a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition as filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

For a reconsideration of the decision stated in your letter of August 13, 2003, I am submitting a showing of the steps taken by our firm prior to the unavoidable delay of paying the maintenance fee, the date and the manner we discovered the expiration of the patent, and the measures added since then to increase the effectiveness of the safety net. I hope the following details will establish that our firm had taken reasonable steps prior to the unfortunate event and that occurrence was unavoidable.

01/27/2003 MAILMED1 00000082 00795038

01 FD=1450

130.00

RECEIVED

AUG 27 2003

OFFICE OF PETITIONS

Assistant Commissioner for Patents

August 22, 2003

Page 2

1. April 10, 2002: Mail server required major service and reconfiguration. Please note that the calendar for tracking the maintenance fee is integral to the functions of the mail server.
2. May 12, 2002: Timeslips corruption: rebuilt account files from hardcopy files and backup tapes. Timeslips is an integrated software program for controlling periodic accounting and client accounts.
3. May 20, 2002: Major revamping of the network system with upgraded software and hardware; making data entry to IRM.
4. July 1, 2002: Changed server; corrected backup system, keeping full backup working each time.
5. July 30, 2002: Timeslips corruption: rebuilt account files from hardcopy files and backup tapes.
6. September 16, 2002: Repaired computer due to crash; switched PC's to DHCP's.
7. October 10, 2002: Downloaded update.

Please note that the services to the firm computer system were provided by Griffing Network, at 11011 Richmond Avenue, Houston, Texas 77042, and/or GalvestonBay.Net, at 2951 Marine Bay Dr., League City, Texas 77573. They are local service companies and are currently under contract with the firm to maintain the operational capability of the system and to solve network problems.

The discovery of the late maintenance fee payment happened on June 30, 2003, during a physical audit of the scheduled payment of maintenance fees for all patents and trademarks. This was later confirmed on July 1, 2003 by email from the USPTO after I had sent an email to the responsible party at the USPTO website for confirmation of the status of the referenced patent. On July 1, 2003, I sent an email to the partner in charge at the law firm to inform of the predicament and to request a release of funds to pay for the surcharge and the maintenance fee. On July 7, 2003, I met with the partner for an overview of the situation and a review of the necessary elements to include in a petition to revive the patent. On July 9, 2003, I completed the draft of the petition and submitted to the partner for review. On July 18, 2003, a check with an amount sufficient for the surcharge and the maintenance fee was issued and the letter was mailed along with the check. Please note that this firm maintains two offices, one in Houston, Texas, and one in Galveston, Texas, and the physical audit had to be performed at both locations, which required a greater effort than normally needed to accomplish the task.

For clarification on the relationship of our computer network system, the alert system was and is implemented on the firm computer network to communicate to all attorneys who are members of the firm and the corresponding staff members a monthly reminder on the date during the six-

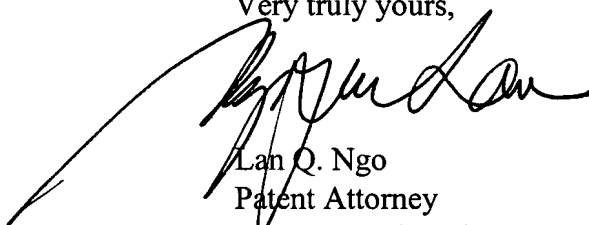
Assistant Commissioner for Patents  
August 22, 2003  
Page 3

month periods preceding the due date. The date entry in this system is centrally controlled and operated by a dedicated staff member and the assigned attorney. In addition, the entry is protected by a security measure and the network integrity is independently maintained by technical experts. Accordingly, this system has provided on-time notice to pay the maintenance fees and has no previous record of failing. Furthermore, the calendar of the alert system is embedded in the mail server software, but was not apparent to a reasonably experienced user. Therefore, the recovery of the mail server services might only have recovered the content of the mail, but not every function of the calendar. Since the discovery of the late payment of the maintenance fee, we have implemented a monthly physical audit of all patents and trademarks.

Furthermore, on July 1, 2002, the firm had a major change which included reorganization of the infrastructure, as well as the top managerial personnel. The firm had paid great expenses to maintain the usual normalcy of the firm's operations, including the computer network. However, due to unforeseen reasons, the computer network was undermined and compromised. Even though the firm has recovered and recreated the greater majority of the system, some data was damaged beyond repair, including part of the alert system. Due to the difficult circumstances experienced by the firm, the steps taken to protect the prized intellectual property, and the additional effort taken to preserve the network integrity, I hope your office will affirm that the delay in paying the maintenance fee was unavoidable due to unprecedented and overwhelming events occurring successively, and that the fees previously submitted, along with the enclosed check for the \$130.00 reconsideration fee, are sufficient to revive the above patent.

I look forward to your favorable response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lan Q. Ngo', is written over a large, sweeping horizontal line that extends to the left.

Lan Q. Ngo  
Patent Attorney  
USPTO Registration: 50549

Enclosures